

REMARKS

The following remarks are responsive to the Office Action mailed October 18, 2006. A Petition for a three-month extension of the term for responding to the Office Action, up to and including April 18, 2007, is transmitted herewith.

A Request for Continued Examination (RCE) is also submitted herewith.

Claims 1-13 and 15 are pending in the present application. Claims 1 and 13 have been amended. Claim 14 has been cancelled. Claim 15 has been added. Support for new claim 15 can be found in Applicants' original disclosure. No new matter has been added.

Claims 1-13 are rejected under 35 U.S.C § 102(b) as being anticipated by U.S. Patent No. 6,190,414 to Young et al ("Young"). The Examiner contends that Young discloses all of the recitations included within the claims against which it is cited. Applicants note that amended independent claims 1 and 13 both include recitations directed towards the manipulation tool having a post being permanently coupled with the manipulation tool and including a first position corresponding to the post being disposed within a distal end of a manipulation tool and a second position corresponding to the post extending outwardly from the distal end of the manipulation tool. These recitations are structural in nature and impart structural features to the manipulation tool.

In the present Action, the Examiner asserts that the intended use as set forth in the claims, carries no weight in the absence of any distinguished structure. Further, the Examiner asserts that the spinal device of Young is fully capable of having the desired surgical approach aspects. This assertion appears to be referring to the relative positions of

the post included within claim 1 and 13 of the present application.

Once again, amended independent claims 1 and 13 of the present application include the recitation of a post manipulation tool having a first position and a second position. When the post is in the first position, the post is disposed within the distal end of the manipulation tool. When the post is in the second position, the post extends outwardly from the distal end of the manipulation tool. And when the post is in the second position, the post may be disposed within the engagement hole of the intervertebral device.

In contrast, Young is limited to disclosing a post, i.e., a telescopic jack mechanism 138, which may be engaged with an orthopedic device. Jack mechanism 138 does not have a first position such that the jack is disposed within the manipulation tool. The jack mechanism may be positioned within the implant member 104 as shown in FIG. 10 and is not permanently coupled with the manipulation tool. Further, the telescopic jack mechanism 38 includes a jack screw 140 that is in threaded engagement with a rotatable component 142. Once again, the combination of the jack screw and rotatable component may be positioned within the implant member 104 and are not permanently coupled with the manipulation tool.

Applicants respectfully assert that independent claim 1 is unanticipated by Young because the cited reference neither teaches nor suggests an orthopedic device including "a manipulation tool having a proximal end, a distal end, and a post, said post being permanently coupled with said manipulation tool." Clearly Young's jack mechanism 138 is not "permanently coupled" with a manipulation tool as required by claim 1. Claims 2-12 are unanticipated, *inter alia*, by virtue of their

dependence from claim 1, which is unanticipated for the reasons set forth above.

Applicants respectfully assert that independent claim 13 is unanticipated by Young because the cited reference neither teaches nor suggests an orthopedic device including "a manipulation tool having a proximal end, a distal end, a spring, and a post, said post being permanently coupled with said manipulation tool." Clearly Young's jack mechanism 138 does not include a spring wherein the spring in contact with the post biases the post into the first position as required by claim 13. Dependent claim 15 should be allowable for at least the same reasons as base claim 13.

As it is believed that all of the rejections set forth in the Official Action have been fully met, favorable reconsideration and allowance are earnestly solicited.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he telephone Applicants' agent at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested Amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: April 17, 2007

Respectfully submitted,

By 

William A. Di Bianca

Registration No.: 58,653

LERNER, DAVID, LITTENBERG,

KRUMHOLZ & MENTLIK, LLP

600 South Avenue West

Westfield, New Jersey 07090

(908) 654-5000

Attorney for Applicants